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Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
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PLR-139279-14

Date:
April 17, 2015

Legend:

Taxpayer =

Sub =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

Dear :

This responds to your request for a ruling received October 20, 2014, and subsequent correspondence, submitted on behalf of Taxpayer. Taxpayer requests a ruling that section 857(d)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), applies to a liquidating distribution by Taxpayer to its shareholders.

Facts:

Taxpayer is a State limited liability company that represents that it has qualified and continues to qualify as a real estate investment trust ("REIT") under sections 856-860 of the Code since it began operating as a REIT on Date 1. Taxpayer's primary

business is acquiring, developing, and leasing real estate assets within the meaning of section 856(c)(5)(B).

Effective Date 2, Taxpayer and Sub, a taxable REIT subsidiary ("TRS") of Taxpayer, jointly revoked Sub's status as a TRS. As a result, Sub became a qualified REIT subsidiary not treated as separate from Taxpayer under section 856(i). Taxpayer represents that sections 332 and 337 applied to the deemed liquidation of Sub and that Taxpayer assumed all of the assets and liabilities of Sub, and succeeded to any C corporation earnings and profits ("E&P") of Sub as of the deemed liquidation date.

In order to comply with section 857(a)(2)(B), which requires that Taxpayer have no non-REIT E&P as of the last day of any taxable year, Taxpayer declared and paid a distribution to its shareholders. On Date 3, Taxpayer's board of directors approved a cash distribution to shareholders in the amount of \$a, which was actually paid in cash on Date 4 (the "Distribution"). Taxpayer represents that the Distribution was large enough to account for all of the Sub's E&P to which Taxpayer succeeded. Taxpayer further represents that no distribution to shareholders of Taxpayer will be a preferential dividend under section 562(c).

Taxpayer's board of directors intends to liquidate Taxpayer in a transaction that taxpayer represents would be a taxable liquidation under sections 331(a) and 336. At the time of the Distribution, there was no formal legal resolution adopting a plan of liquidation of Taxpayer. Based upon advice that Taxpayer received and upon Taxpayer's review of actions taken by shareholders, management, and members of the board of Taxpayer, however, Taxpayer believes and represents that there was an adoption of a plan of liquidation of Taxpayer for purposes of subchapter C prior to the Distribution.

Law and Analysis:

Section 857(a)(2)(B) provides that an entity will not be treated as a REIT for a taxable year under section 856 unless as of the close of the taxable year, the REIT has no E&P accumulated in any non-REIT year.

Section 857(d)(3)(A) provides that any distribution which is made in order to comply with the requirements of section 857(a)(2)(B) shall be treated for purposes of sections 857(d) and 857(a)(2)(B) as made from E&P which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis).

Section 1.857-11(b) of the Income Tax Regulations provides that a REIT does not satisfy section 857(a)(2)(B) unless, as of the close of the tax year, it has no E&P other than E&P that were earned by a corporation in a year for which part II of subchapter M applied to the corporation and, at all times thereafter, were the E&P of a corporation to which part II of subchapter M applied.

Section 1.856-1(e) of the Income Tax Regulations provides that to the extent that other provisions of chapter 1 are not inconsistent with the REIT provisions and the regulations thereunder, such other provisions will apply to REITs in the same manner that they would apply to any other domestic corporation. For example, § 1.856-1(e)(6) provides that, except as provided in section 857(d), E&P of a REIT are computed in the same manner as in the case of a domestic corporation, and § 1.856-1(e)(7) provides that section 316, relating to the definition of a dividend, applies to distributions by a REIT.

Section 312(a) provides that, except as otherwise provided, on the distribution of property by a corporation with respect to its stock, the E&P of the corporation shall be decreased by the sum of (1) the amount of money, (2) the principal amount (or, in the case of obligations having original issue discount, issue price) of the obligations of the corporation, and (3) the adjusted basis of the other property distributed. In the case of other property that has appreciated, section 312(b) generally provides for an increase in the corporation's E&P to reflect the appreciation and a decrease in the corporation's E&P by the fair market value (instead of adjusted basis) of the property to reflect the distribution.

Section 312(d) provides that the distribution to a distributee by or on behalf of a corporation of the corporation's stock or securities, of stock or securities in another corporation, or of property generally is not considered a distribution of the E&P of any corporation (A) if no gain to such distributee from the receipt of the stock or securities, or property, was recognized, or (B) if the distribution was not subject to tax in the hands of the distributee by reason of section 305(a).

Section 1.312-11(c) of the Income Tax Regulations provides that the E&P of a corporation making a distribution in liquidation (other than a tax-free liquidation or certain reorganizations) generally is diminished by the portion of the distribution properly chargeable to E&P.

Section 316(a) provides that, except as otherwise provided in subtitle A, every distribution by a corporation to its shareholders is made out of E&P to the extent thereof, and from the most recently accumulated E&P. Section 316(a) provides further that to the extent that any distribution is, under any provision of subchapter C, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of section 316(a).

Based on Taxpayer's representation that it adopted a plan of liquidation prior to the date of the Distribution, the Distribution is generally treated as a liquidating distribution under subchapter C. Taxpayer represents that the liquidation of Taxpayer will be a taxable liquidation under sections 331(a) and 336. Distributions in a taxable liquidation generally diminish the E&P of the distributing corporation. See § 1.312-

11(c). The language of section 857(d)(3)(A) does not exclude liquidating distributions, and Taxpayer represents that the Distribution was made to comply with the requirements of section 857(a)(2)(B). Therefore, for purposes of section 857(a)(2)(B), the E&P ordering rule in section 857(d)(3)(A) applies to the Distribution, notwithstanding the E&P rules that would apply to the Distribution if Taxpayer were a domestic corporation other than a REIT. See § 1.856-1(e)(6).

Conclusion:

Based on the facts and representations set forth above, we rule that section 857(d)(3) applies to the Distribution.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed (i) whether the Distribution was a liquidating distribution or (ii) whether the amount of the Distribution was sufficient to meet the requirements of section 857(a)(2)(B).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Steven Harrison
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Financial Institutions & Products)

cc: